

Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, Local 6 and The Bachman Company and International Brotherhood of Teamsters, Local 429 a/w International Brotherhood of Teamsters, AFL-CIO. Case 4-CD-1060

March 12, 2002

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND BARTLETT

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charge in this 10(k) proceeding was filed on May 10, 2001, by the Employer, The Bachman Company, alleging that Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, Local 6 (Bakery Workers Local 6) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the International Brotherhood of Teamsters, Local 429 a/w International Brotherhood of Teamsters, AFL-CIO (Teamsters Local 429). The hearing was held on August 9, 2001, before Hearing Officer Michael C. Duff.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record,¹ the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer, a Pennsylvania corporation, is engaged in the business of manufacturing and distributing snack foods from facilities located in Reading and Ephrata, Pennsylvania. During the calendar year preceding the hearing, the Employer purchased and received goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Bakery Workers Local 6 and Teamsters Local 429 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer operates a snack food manufacturing facility in Reading, Pennsylvania, where it produces two

primary products: pretzels and cheese twists (Jax). The Employer has separate collective-bargaining agreements with Bakery Workers Local 6 and Teamsters Local 429 covering about 160 Reading employees. The Employer has a contract with Bakery Workers, Local 6 covering a unit of about 125 production employees. The Employer has two separate contracts with Teamsters, Local 429, one covering a 21-person platform and sanitation unit, and a second covering a unit of about 10 maintenance employees.

The work in dispute involves the stacking of pretzel cases on wooden pallets and the cleaning of scaling units on Jax packing machines.

1. Production process

a. Pretzel production

Since at least 1994, the Employer's pretzel packing operation has consisted, in relevant part, of transporting the baked pretzels along a conveyor belt onto an Ishida scale. This scale is a large machine containing two tiers of 14 removable buckets each. As the pretzels fill the 28 buckets, a computer determines when the predetermined weight for each bag has been met. Once the predetermined weight has been reached, the scaling unit drops the pretzels into a Hayssen packing machine, located below the Ishida Scale, that automatically wraps the pretzels into plastic bags.

Since 1994, machine technicians and operators represented by Bakery Workers Local 6 have been assigned the work of operating and cleaning the Ishida scale machines on the pretzel lines. That cleaning process consists of: removing the Ishida scale's buckets, feeder and slide pans; dipping them in a cleaning solution; rinsing this equipment; hanging it to dry; reassembling the scaling unit; and recalibrating the machines.

b. Jax production line

Prior to April 2000, the Jax production line scale/packing system consisted of Mira Pak machines that weighed the cheese twists and then dumped them into the portion of the machines that sealed the product in plastic bags. Under this process, Local 429-represented sanitation workers were assigned the work of wiping down the two, nonremovable scale buckets on the Mira Pak machines.

In April 2000, the Employer replaced the Mira Pak machines with Ishida and Hayssen machines for weighing and packaging the Jax product. The Employer then conducted a 3-week trial period to determine how best to operate and staff the Jax line in conjunction with the new machinery.

After the trial period, the Employer decided to create the position of machine operator on the third shift to

¹ We grant Bakery Workers Local 6's unopposed motion to correct the transcript.

handle duties associated with the new production line equipment. This new position was placed in the Bakery Workers Local 6 unit, and its duties included cleaning the Ishida scale units (according to the process described above), as well as preparing and setting up the packaging machines so that production could commence at the beginning of the first shift.

The Teamsters filed a grievance over the assignment of the cleaning work to Local 6-represented employees, which grievance culminated in arbitration. The arbitrator found that the Employer had violated its collective-bargaining agreement with the Teamsters by assigning the Jax scale cleaning work to employees represented by Bakery Workers Local 6. In response to the arbitral award, the Employer reassigned this cleaning work to employees represented by Teamsters, Local 429.

Workers represented by Local 6 have the expertise to recalibrate the Hayssen-Ishida machines after they have been cleaned, but the Teamster-represented sanitation workers do not. As a consequence, the Employer routinely is required to assign overtime to employees represented by Bakery Workers Local 6 to set up production on the first shift.

2. Distribution process

a. Jax line

Once the Jax product has been sealed into plastic bags, the bags are conveyed to a Bakery Workers, Local 6 represented packer, who packs them in a case. The case is then placed on a conveyor belt, and transported to a Local 6-represented "stock person." The stock person lifts the case off the conveyor belt and places it on a wooden pallet sitting atop a scissor lift. As the stock person stacks cases on the pallet, the scissor lift recesses into the floor. This enables the stock person to stack cases on the pallet to a height of 9 feet without having to lift cases above his or her head.

When the pallet has been stacked to the desired height, the stock person uses a hand pallet jack to move the completed pallet to an automatic wrapping machine, which the stock employee operates. Thereafter, a Teamsters-represented tow motor operator moves the wrapped pallet with a forklift into the warehouse area.

b. Pretzel line

Unlike the Jax line, prior to 2000, there were no recessed scissor lifts used for pretzel packing. Instead, a Bakery Workers, Local 6-represented stock person manually built a pallet up to 6 feet in height—the highest that the pallet could be stacked and still transported from the production area to other areas of the plant. The Bakery Workers Local 6 stock person then taped the 6-foot pallet, which a Teamster-represented motor operator

transported by forklift into the warehouse. Once in the warehouse, Teamster-represented warehouse workers would stack the remaining 3 feet of product on the pallet and cover the load using the automatic wrapping machine.

In June 2000, the Employer installed the identical scissor lift pallet system on the pretzel line that was in use in the Jax distribution process. The Employer assigned the work of stacking cases on the pallet, and operating the automatic wrapping machine, to Bakery Workers Local 6-represented stock employees. Because of the recess feature on the scissor-lift system, and the fact that the product was now conveyed to a central location in the plant where a 6-foot height limit on pallets was not necessary, there was no longer the need for Teamster-represented warehouse employees to build onto the Local 6 stacked pallet (i.e., "high stacking").

Teamsters Local 429 filed a grievance over the Employer's assignment of the pretzel palletizing work. This grievance was pending at the time of the hearing, and Teamsters Local 429 has indicated that it intends to arbitrate the matter.

B. Work in Dispute

The disputed work involves the stacking of pretzel cases on wooden pallets and the cleaning of scaling units on the Ishida packaging machines.

C. Contentions of the Parties

The Employer and Bakery Workers, Local 6 contend that the disputed work should be awarded to employees represented by Local 6 on the basis of Employer preference, Employer past practice, and economy and efficiency of operations.

Teamsters, Local 429 contends that the disputed work of cleaning Ishida scales should be awarded to employees it represents on the basis of relative skills, the arbitral award, and the fact that the Employer's change from the Mira Pak to Ishida-Hayssen production system merely signified a substitution of job functions and not a job change. It further claims that its unit employees should be awarded the disputed "high stacking" pretzel palletizing work on the basis of past practice, and the fact that the Employer's reassignment of this work has resulted in the loss of Local 429 unit positions.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This requires a finding that (1) there are competing claims to the disputed work between rival group of employees, and (2) a labor organization has used proscribed means to enforce

its claim to the work in dispute. The Board must also find that the parties have not agreed on a method for the voluntary adjustment of the dispute.²

Here, the parties have stipulated that there is no agreed upon method for voluntary adjustment of the dispute. We further find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Thus, the parties have stipulated that both Unions claim the work in dispute.³ Further, we find that Local 6 used proscribed means to further its claim. Thus, after Local 429 filed grievances over the Employer's assignment of the scale cleaning and high stacking work to Local 6-represented employees, and after the Employer reassigned the cleaning work to Local 429-represented employees as a result of the arbitrator's March 2001 award, Local 6 president, John Cairns, wrote the Employer on January 5, 2001 that:

[U]ntil such time as Local 429 withdraws its claim to [the work in dispute], Local 6 will take whatever economic action is necessary to protect Local 6's work jurisdiction, including but not limited to, concerted refusals to work voluntary overtime, initiation of consumer boycotts against the Company and its vendors, and work stoppages, as Local 6 deems appropriate.

It is well settled that the threat to cause a work stoppage or engage in other economic reprisals to support a claim for disputed work provides reasonable cause to believe that section 8(b)(4)(D) has been violated. See, e.g., *Operating Engineers Local 150 (Diamond Coring Co.)*, 331 NLRB 1349, slip op. at 2 (2000); *Teamsters Local 179 (USF Holland, Inc.)*, 334 NLRB 362, 363 (2001).

Accordingly, for the foregoing reasons, we find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various

factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in deciding this dispute.

1. Certification and collective-bargaining agreements

The parties stipulated, and the evidence establishes, that neither Bakery Workers Local 6 nor Teamsters Local 429 have been certified to represent any of the Employer's employees. The record does establish, however, that each union has a collective-bargaining agreement with the Employer, although only the Local 6 contract is part of the record. The recognition article of the current Local 6 contract provides that the Bakery Workers, Local 6 is "the sole collective bargaining agency for all of [the Company's] production employees." (Art. II, sec. 1.) Further, Local 6's contractual wage schedule covers job classifications of employees who have historically cleaned the Ishida scaling units (machine tech) as well as classifications of employees who have stacked pretzels (and Jax) cases on wooden pallets (stock persons and shipper packers).

Although the Teamsters collective-bargaining agreement was not introduced into the record, the record establishes that a labor arbitrator concluded that the work of cleaning the Jax Ishida scales was covered by Local 429's collective-bargaining agreement, and that Local 429 is pursuing a grievance over the assignment of the pretzel stacking work. There is no evidence, however, that either the Local 6 agreement or the Local 429 contracts specifically refer to the two types of work in dispute.

Accordingly, we find that the factors of certification and collective-bargaining agreements do not favor awarding the disputed work to either group of employees.

2. Employer preference and current assignment

The Employer assigned the disputed pretzel palletizing work to employees represented by Bakery Workers, Local 6 and prefers that they continue to perform this work.

The Employer initially assigned the disputed Jax Ishida cleaning work to employees represented by Bakery Workers Local 6. It reassigned this cleaning work to Local 429-represented employees only because it was compelled to do so under the March 2001 arbitration award. Notwithstanding this reassignment, the Employer

² *Teamsters Local 259 (Globe Newspaper Co.)*, 327 NLRB 619, 622 (1999); *Laborers' Local 113 (Super Excavators)*, 327 NLRB 113, 114 (1998); *Laborers' District Council of West Virginia*, 325 NLRB 1058, 1059 (1998).

³ Further, the record evidence supports this stipulation. Thus, Teamsters Local 429 claimed the scale cleaning work in their grievance and through their performance of that work following the arbitration award. (The Board has long held that performance of work by a group of employees is evidence of a claim to that work by those employees. *Operating Engineers Local 926 (Georgia World Congress Center)*, 254 NLRB 994, 996 (1981).) Bakery Workers, Local 6 claimed the same cleaning work by the January 2001 statement of its president.

Likewise, Local 429 claimed the pretzel palletizing work based on its grievance, and Local 6 claimed it through the January statement and the performance of this work by employees it represents.

continues to prefer that this cleaning work be assigned to Local 6-represented employees.

Accordingly, these factors favor awarding the disputed work to employees represented by Bakery Workers, Local 6.

3. Employer past practice

a. Production

The record establishes that Teamster-represented employees cleaned the Mira Pak scaling unit on the Jax line prior to the installation of the Ishida-Hayssen machinery. However, on the pretzel line, where the Ishida-Hayssen machinery traditionally has been used, the Employer has assigned the cleaning work to employees represented by Bakery Workers, Local 6. Since the work in dispute involves a new combination, i.e., the Jax cleaning work (historically Local 429 work) of the Ishida scaling units (traditionally Local 6 work), we find that this factor does not favor an award of the disputed work to either group of employees.

b. Distribution

The record shows that the Employer historically has assigned the work of stacking cases on wooden pallets on the Jax line, using scissor lifts, to employees represented by Bakery Workers Local 6. That same stacking process is now in use on the pretzel line. However, the record also shows that Teamster-represented employees traditionally performed high stacking of pallets by hand on the pretzel line. Because the work in dispute involves a new combination of work, i.e., stacking pretzel cases on wooden pallets using scissor lifts (historically Local 6 work), which encompasses the former "high stacking" work (historically Local 429 work), we find that this factor does not favor an award of the disputed work to either group of employees.

4. Area and industry practice

The Bakery Workers presented evidence that Philadelphia area bakery and confectionery manufacturers, with which Local 6 has collective-bargaining agreements, commonly use the Ishida Scale-Hayssen packing machine (or similar equipment). Local 6 presented further evidence that, at these other companies, machine operators it represents clean the scaling units on the Ishida machines.

Bakery Workers Local 6 also presented testimony that the stacking of product on pallets using scissor lifts is work historically performed by Local 6-represented employees in the Philadelphia geographic area.

Teamsters, Local 429 provided no evidence that area employees it represents perform either type of disputed work at other area companies.

Accordingly, this factor favors an award of the work in dispute to employees represented by Bakery Workers, Local 6.

5. Relative skill

The record evidence fails to establish that particular skills are needed to perform either the cleaning or pallet stacking work, other than a small amount of on-the-job training. Accordingly, this factor does not favor employees represented by either union.

6. Economy and efficiency of operations

Regarding the cleaning of the Ishida Scale units on the Jax line, the Employer and Bakery Workers, Local 6 testified that it was more efficient to assign the work to employees represented by Local 6 who would be able not only to clean and reassemble the scaling units, but also to prepare the Hayssen machine for first shift production. They argue that this latter capability will reduce the overtime work of first shift machine technicians, once the Local 6 employee is fully trained.⁴

Regarding the stacking of pretzel cases on wooden pallets, the Employer and Local 6 presented evidence that, by assigning the work to a Bakery Workers, Local 6-represented stock person, it can take advantage of cross training, and thus rotate the stock persons into other packing and production positions.

Accordingly, we find that this factor favors awarding the disputed work to employees represented by Bakery Local 6.

7. Job loss

Teamsters Local 429 contends that by assigning the work of stacking pretzel cases on wooden pallets to Bakery Workers Local 6, the Employer eliminated 3 to 5 Teamster-unit jobs: one to two by layoff, and two to three through attrition.

There is no evidence as to how many, if any, jobs would be lost by employees represented by Local 6 if the work were assigned to employees represented by Teamster Local 429.

We find that this factor favors an award of the disputed pretzel packing work to employees represented by Teamsters Local 429.

⁴ Teamsters Local 429 argues that experience has not borne out the claim of reduced overtime, and that it is absurd to contend that, after 9 months (when the work was reassigned pursuant to the arbitration award), the Local 6-represented employee was still in training. However, Rona Palm, the Local 6-represented employee who was assigned to the new third-shift machine operator position testified that training to operate the Ishida/Hayssen machinery requires 90 days dedicated entirely to training. According to Palm, because her training was intermittent during this 9-month period, she had not yet finished her 90 days of training at the time the work was reassigned.

8. Arbitration awards

Finally, Teamsters Local 429 claims that it is entitled to the disputed Jax cleaning work based on the March 2001 arbitration award. However, Local 6 did not participate in that arbitration hearing, nor did it agree to be bound by the arbitrator's decision. Further, there is no evidence that the arbitrator considered the factors on which the Board relies when it resolves jurisdictional disputes. See, e.g., *Electrical Workers Local 104 (Standard Sign & Signal Co.)*, 248 NLRB 1144 (1980); *Automotive Trades District Lodge 190 (Sea-Land Service)*, 322 NLRB 830, 832 (1997).

Accordingly, we find that the arbitration award does not favor employees represented by either Union.

Conclusion

After considering all the relevant factors, we conclude that employees represented by Bakery Workers Local 6 are entitled to perform the work in dispute. With regard to the work of cleaning the Ishida scale units, we reach this conclusion based on the factors of employer preference, area and industry practice, and economy and effi-

ciency of operation. As to the work of stacking pretzel cases on wooden pallets, we reach this conclusion based on the factors of employer preference, area and industry practice, and economy and efficiency of operation and find that they outweigh the countervailing factor of loss of jobs.

In making this determination, we are awarding the work to employees represented by Bakery Workers Local 6 not to that Union or its members. This determination is limited to the controversies that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board hereby makes the following Determination of Dispute:

Employees of The Bachman Company who are represented by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 6, are entitled to the work at the Reading facility of cleaning the Ishida Scale units on the Jax line and of stacking pretzels on wooden pallets.